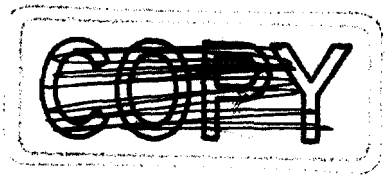
DOCKET FILE COPY ORIGINAL



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Service	)	
Inside Wiring	)	CS Docket No. 95-184
	)	
Customer Premises Equipment	)	
	)	
In the Matter Of	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection	)	MM Docket No. 92-260
and Competition Act of 1992:	)	
	)	
Cable Home Wiring	)	

To: The Commission

REPLY COMMENTS OF INDEPENDENT CABLE & TELECOMMUNICATIONS ASSOCIATION

INDEPENDENT CABLE & TELECOMMUNICATIONS ASSOCIATION

Deborah C. Costlow
Alan G. Fishel
ARENT FOX KINTNER PLOTKIN & KAHN
1050 Connecticut Avenue, N.W.
Washington, D.C. 20005
(202) 857-6380

Its Attorneys

Dated: October 6, 1997

SUMMARY OF COMMENTS

The home run wiring issues that triggered the demand for this proceeding have been unsettled for over a decade. This proceeding itself began five years ago. The time for action has certainly come.

The proposed procedures set forth in Section III.C.-D. (the "Proposed Procedures") of the Further Notice of Proposed Rulemaking in this proceeding ("Further Notice") should promote competition although not to the extent that a change in the demarcation point back to the junction box would have. The franchised cable operators, however, seek to thwart even the implementation of the Proposed Procedures by filing reams of paper that add nothing new to their same old arguments. In a transparent effort to delay the resolution of this proceeding, franchised operators collectively have (i) filed several hundred pages of comments to the Further Notice, which was very limited in scope; (ii) repeated arguments ad nauseam, most of which have previously been rejected; and (iii) raised a host of issues that are clearly outside the scope of this proceeding.

The Commission should not reward the franchised operators' obvious attempts to thwart competition by delaying imposition of the Proposed Procedures any longer. Rather, with the clarifications set forth herein and in The Independent Cable & Telecommunications Association's September 25, 1997 comments in this proceeding, the Commission should implement the Proposed Procedures now.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Service	)	
Inside Wiring	)	CS Docket No. 95-184
	)	
Customer Premises Equipment	)	
	)	
In the Matter of	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection	)	MM Docket No. 92-260
and Competition Act of 1992:	)	
	)	
Cable Home Wiring	)	

To: The Commission

REPLY COMMENTS OF INDEPENDENT CABLE & TELECOMMUNICATIONS ASSOCIATION

The Independent Cable & Telecommunications Association ("ICTA") submits these reply comments in response to the comments submitted to the Further Notice of Proposed Rulemaking ("Further Notice") in the above-referenced proceeding.

DISCUSSION

With the clarifications set forth in Section I herein and in ICTA's September 25, 1997 comments in this proceeding ("ICTA's Initial Comments"), the Commission should implement as soon as possible the procedures proposed in Section III.C.-D. of the Further Notice (the

"Proposed Procedures").[1/] As shown in Section II herein and in ICTA's other submissions and comments in this proceeding, the contrary arguments of the franchised operators and those who support their position[2/] are untenable.[3/]

I. CLARIFICATIONS

A. Stay/ Presumption

As discussed in ICTA's Initial Comments, given that the Proposed Procedures only apply in a building-by-building scenario where the incumbent provider no longer has a legal right to remain on the premises, it is important that the Commission clarify when that occurs. ICTA strongly believes that if the Proposed Procedures are to have any benefit whatsoever, an incumbent provider cannot just claim that it has a right of access, either orally, by letter or in a lawsuit. If such were the case, an incumbent provider could easily avoid application of the Proposed Procedures while the matter was pending in a non-meritorious lawsuit even though the incumbent provider truly has no legally enforceable access rights.

Instead, the Commission should clarify the Proposed Procedures to provide that such procedures apply only where the incumbent provider obtains a stay or other injunctive relief preventing the property owner from exercising its rights to terminate the provider's access. In

---

[1/] ICTA will not herein fully repeat its arguments and proposed clarifications in ICTA's Initial Comments including, for example, a detailed discussion of why enforcement penalties are critical. Obviously, without any enforcement penalties to ensure that the video services providers will comply with the Proposed Procedures, those procedures may easily be ignored.

[2/] For ease of reference, throughout these comments franchised cable operators and those who support their positions are referred to as "franchised operators."

[3/] ICTA does not attempt to address every argument raised by franchised operators as many of those arguments have been fully addressed by the Commission or are patently erroneous.

that way, an incumbent provider will only be able to avoid the application of the Proposed Procedures where such avoidance is likely to be proper: that is, where it can make a sufficient showing to a court that it has the right to continue serving the property such that the court issues injunctive relief preventing termination and consequently application of the Proposed Procedures.

The Commission may implement the foregoing clarification by specifying under the rules that a stay or injunctive relief must be obtained before the expiration of the time periods in the Proposed Procedures. Alternatively, as ICTA stated in its Initial Comments, the Commission may clarify the rules to provide that a presumption exists that the incumbent provider does not have a legally enforceable right to continue to access the premises, where the only effect of the presumption is that it forces an incumbent provider to obtain a stay or other injunctive relief to avoid application of the Proposed Procedures. Since that would be the only purpose of the presumption, the franchised operators' claims that a presumption is improper because it will affect state law property rights or because the Commission does not have the necessary expertise in this area miss the point entirely. The presumption will not have any affect on state law property rights nor will it require Commission expertise as to those rights.

Finally, the Commission should require any incumbent provider seeking judicial intervention also to file a certified statement with the Commission detailing the grounds allegedly creating a legally enforceable right to remain on the premises. In such fashion, the Commission would be able to compile a record of the number and nature of such proceedings which ICTA believes will shed significant light on cable franchisees' attempts to thwart competition in the MDU marketplace.

B. Unit-by-Unit Scenario

If there is any hope of enhancing competition in mandatory access states -- short of preempting or removing such discriminatory laws -- it lies in permitting the alternative provider to have access to the existing home run wiring that would be used to serve the alternative provider's subscribers. Therefore, in such states, it is imperative that the Commission require the incumbent to sell, remove or abandon the home run wiring that serves a tenant who elects to become a subscriber of the alternative provider.

In the Further Notice, the Commission stated that its Proposed Procedures would not apply in a unit-by-unit context where the incumbent has the right to keep or "maintain" its home run wiring on the property over the objections of the owner. Many mandatory access statutes allow an incumbent to keep its equipment on the property because those statutes assume the incumbent will serve the property forever and not because the legislatures were seeking to give the incumbents any additional rights with respect to wiring. If the Commission, however, permits such language in those statutes to preclude application of its Proposed Procedures in mandatory access states, the unit-by-unit scenario will be of virtually no benefit to anyone and will rarely be applicable. Accordingly, the Commission should clarify its rules to provide that in the unit-by-unit scenario, unless the owner has, by contract, explicitly given the incumbent the right to maintain home run wiring when it is not being used by the incumbent to serve tenants, the Proposed Procedures will apply to such wiring. [4/]

[4/] Even if the Proposed Procedures applied in mandatory access states where one tenant must request service before the incumbent may provide service, see Further Notice n. 100, there are only a few states that have that as an absolute requirement. Moreover, that requirement has no practical effect whatsoever on franchised operators' rights as any franchised operator can

C. Physical Inaccessibility

ICTA fully supports and agrees with the positions set forth by The Wireless Cable Association International, Inc. in its September 25, 1997 comments in this proceeding ("WCAI's Initial Comments") with respect to how to determine whether a demarcation point is physically inaccessible, and if it is, where the demarcation point should be located. See WCAI September 25, 1997 Comments at 14. ICTA believes that the Commission should adopt WCAI's proposals with regard to this matter so that there is no ambiguity with respect to these issues. Any ambiguity would merely create uncertainty, stifle competition, and increase the risk of litigation over what is the proper demarcation point.

D. Agreements Executed after the Implementation of the New Regulations

The Commission requested that parties comment on whether for all agreements executed after the implementation of the Proposed Procedures it should require providers to tender ownership of the wiring to owners at the commencement of the relationship. ICTA believes that this would raise takings issues, and therefore such proposal should not be implemented at this time.[5/]

---

convince one tenant to use its services. Thus, there is no reason to distinguish between those mandatory access statutes and the majority of mandatory access statutes. The Proposed Procedures should apply with respect to both types of mandatory access statutes.

[5/] At least one franchised operator proposed requiring that all agreements executed after the implementation of the new regulations include a provision specifying the disposition of the wiring upon service termination. The flaw in that proposal is that in many instances property owners have no choice but to execute form contracts drafted by the franchised operator as widespread cable competition has not yet occurred.

II. RESPONSES TO FRANCHISED OPERATORS' ARGUMENTS

A. Statutory Authority

For the reasons set forth in the Further Notice, the Commission unquestionably has the statutory authority to implement the Proposed Procedures. See Further Notice, ¶ ¶ 56-63.

The Proposed Procedures are essentially a set of timetables that do not change substantive rights, but which will further competition in the marketplace. These timetables seek to (i) establish more certainty for all concerned where there is precious little now; (ii) avoid unnecessary rewiring of property and lengthy interruptions in tenants' services; and (iii) prevent franchised cable operators from continuing to engage in the "game playing" where in an effort to stay on properties where they otherwise have no rights, they falsely claim that they will remove the wiring upon termination. The Commission, like virtually any regulatory agency, certainly has the authority to institute timetables. If the Commission cannot set up procedures such as timetables, than what can it do? In sum, the Commission certainly has the statutory authority to implement the Proposed Procedures.

B. Benefits of Proposed Procedures

One group of franchised operators argue that the Proposed Procedures will not benefit competition because they are only triggered where the incumbent provider has no further right to serve the Property (or the tenant in the unit-by-unit scenario), and those access rights are often unclear. Another group of franchised operators claim that the Proposed Procedures will, in fact, discourage competition in the MDU market. Both of these contentions are wrong.

Often it is clear that the incumbent provider has no right to serve the MDU but it is unclear as to who owns the wiring. The Proposed Procedures will provide certainty to the MDU

owners in that situation because even if they assume the incumbent owns the wiring, they will know well in advance whether the wiring will be sold, removed or abandoned. This gives the MDU owner the time it needs to have new wiring installed if necessary, and it will eliminate the unnecessary, potentially destructive and costly rewiring of MDUs when the incumbent was planning to abandon the wiring in any event. Without the Proposed Procedures, even incumbents that have no access rights often will assert that they do where they have at least a questionable claim of ownership of the wiring, hoping that the MDU owner will allow them to stay since its only other alternatives are installing new wiring or risking a lawsuit.

As to the franchised operators' claim that the Proposed Procedures will discourage competition, the opposite is true. As the Commission has recognized, the appropriate market to consider is the MDU market within a city. Currently, franchised operators dominate this market in the vast majority of cities. The Proposed Procedures should at the very least reduce this disparity in market share in many cities because MDU owners will no longer be induced to retain the incumbent based on the fear that the incumbent would remove the inside wiring upon termination where the incumbent, in fact, had no intent to do so. One cannot argue with the proposition that from a competition and public interest standpoint it is certainly better to have different providers serving different MDUs in a city than the same provider serving them all.

The franchised operators claim that there should be competition within every MDU itself, instead of just competition within the municipality. The problem with that view is that it is unrealistic in today's climate. As the Commission correctly recognized, because of risk of damage to the building, aesthetic and many other concerns, most property owners will not allow two sets of wiring in their buildings. Therefore, there simply will not be competition in most

MDUs. Moreover, as previously fully explained by ICTA, most alternative providers -- just like the cable operators before them -- need exclusivity in an MDU to recoup their investment. In short, competition within MDUs is not realistic, but competition within a city is, and that is what these Proposed Procedures should help create.[6/]

C. Fairness of the Proposed Procedures

Franchised operators raise several arguments in an effort to support their claim that the Proposed Procedures are unfair to them, including (i) the time periods for negotiations are too short; (ii) MDU owners will simply delay the negotiations until the cable operator must submit to an unreasonably low price; and (iii) there is no default price to ensure that the operators receive "fair market value" for their wiring. Each of these contentions is easily rebutted.

For the reasons set forth in ICTA's Initial Comments, the length of the time periods in the unit-by-unit scenario should, in fact, be shorter. In the building-by-building scenario, the time periods also certainly are not too short. In that scenario, the operator has thirty days to make its initial election and an additional thirty days to negotiate a sales price if it elects to sell the wiring. This thirty day period to negotiate a sale price is more than sufficient. ICTA members have been involved in many negotiations in which the parties reached a sales price within one to two weeks, or determined within that period that a price could not be reached. To give even more than thirty days to negotiate a sales price would force an owner to provide an operator with more than three

---

[6/] As the Commission has recognized, franchised operators' claims that in a minute percentage of MDUs there is competition within MDUs proves ICTA's point. The fact of the matter is that while a tiny percentage of MDU owners allow multiple sets of home run wires, the vast majority do not.

months advance notice of termination. That is unfair and unnecessary where the operator has no enforceable right to continue serving the property.

Franchised operators' claims that the MDU owners will delay the negotiations until the last minute so that they can get a low price for the wiring ignores the disincentives of such an approach. MDU owners do not want to incur the wrath of their tenants. It is a well known fact that angry tenants often soon become former tenants. To put it mildly, many tenants get very upset when they do not have any cable service for even a day, let alone several days. If MDU owners were to engage in this game of "chicken," as franchised operators claim they will, the owners would risk leaving their tenants without cable services for many days or even weeks if the incumbent elected to remove its wiring when last minute negotiations failed. The alternative provider obviously would not commence installing the new wiring when there was still a chance of using the existing wiring, and thus the tenants would be without cable service during the entire period when the new wiring was being installed.[7/]

Franchised operators' claims that a default price is necessary to eliminate the purported unfairness the Proposed Procedures create is also wrong. The Proposed Procedures would simply prevent the "game playing" referred to in section 1 above; they would not operate in an unfair manner towards franchised operators. The franchised operators in their hundreds of pages of comments have conveniently forgotten to mention that the wiring they must sell, remove or abandon under the Proposed Procedures ordinarily is wiring that the MDU owner can also just as

---

7/ Time Warner's oft-repeated acknowledgment (some might say threat) that it will remove the wiring if it cannot reach an agreement on a sales price belies the claims of some franchised operators that no franchised operator will remove the wiring.

easily stake an ownership claim to or that is worthless to the franchised operators' once their service is terminated. If that were not the case, the franchised operators would be more than willing to remove the wiring and use it elsewhere. The fact that under these Proposed Procedures franchised operators ordinarily will be offered thousands of dollars for wiring that is worthless to them hardly seems unfair.

This lack of unfairness is even further evidenced by another fact the franchised operators never seem to mention -- that ordinarily franchised operators have not only recouped the costs of the wiring during the term of their access, they usually have recouped the cost many times over. Many times franchised operators have recouped the costs twenty to fifty times over. There simply is no unfairness here.

In fact, what would be unfair is to place any default price, and particularly a default price relating to the replacement cost. Such a default price would result in a clear, governmentally-imposed, windfall to the near monopolist franchised operator. Moreover, determining a fair default price would be impossible. A fair price for the wiring would depend upon many factors, including the age of the wiring, the upgrades performed, the type of wiring, and the physical condition of the wiring. Thus, claims that a fair default price could be set at a specific dollar amount per unit are at best naive and at worst disingenuous.

Establishing a default price would raise another troublesome issue as well. As stated in ICTA's Initial Comments, creating a default price could create constitutional takings issues and subject the Proposed Procedures to a challenge on that basis.

Finally, as stated in more detail in ICTA's Initial Comments, even if a default price otherwise made sense and did not raise constitutional issues, it should be unnecessary here given

that all the parties have an incentive to reach an agreement. The franchised operator has an incentive to receive a payment for the wiring that is worthless to it, the property owner has an incentive to avoid a rewiring of its building, and the alternative provider has an incentive to pay for the right to acquire (or use if the owner acquires) the wiring.[8/]

D. Property Owner Compensation for Use of their Property

Many franchised operators claim that the Proposed Procedures should not apply where the MDU owner receives compensation from the alternative provider for use of the owner's property. These franchised operators claim that the Proposed Procedures only should apply where the owner allows the alternative provider to use its property for free. The franchised operators repeatedly characterize payments to the property owners as "kickbacks, " and several franchised operators spend page after page after page of their comments condemning these payments.

The franchised operators' arguments are being made in the wrong proceeding, have no validity in any event, and are ironic and hypocritical to an extreme rarely seen. This is not the proper proceeding to raise these arguments because they involve the issue of owner compensation for use of its property, which the Commission has stated is an issue that it might subsequently consider at a later date. Trying to wedge this issue into the Commission's Further Notice regarding the Proposed Procedures, where such issue clearly does not belong, also ignores

---

[8/] For all of the reasons set forth in this subsection, the Commission should also reject certain franchised operators' twist on the default price proposal whereby they suggest that the owner would have the option of buying the wiring at the default price but if it failed to do so the provider could leave its wiring on the property.

the Commission's request in the Further Notice to limit the comments to matters directly bearing on the Proposed Procedures and related matters raised by the Commission.

Given that this is not the proper proceeding to address this issue, ICTA will only briefly explain why the franchised operators' position is wrong. Except in Virginia, owners are permitted to charge video services providers for use of their property. That is, it is legal for owners to do so. In fact, in mandatory access states video service providers must pay the owners' for use of their property or otherwise the statute is unconstitutional. See Loretto v. Teleprompter Manhattan CATV Corp.,458 U.S. 419 (1982). For franchised operators to suggest that property owners should not receive the benefit of the Proposed Procedures if they engage in an act that is legal in virtually every state and required in many states is absurd. In fact, if the franchised operators' position was adopted it would lead to the anomalous result that in mandatory access states the franchised operator must pay for use of the property but the alternative provider cannot pay for its use of the property if the owner wants the benefits of the Proposed Procedures.

Finally, the irony and hypocrisy of the franchised operators' position on this matter is stunning. The franchised operators are claiming that an MDU owner should receive no compensation whatsoever for the use of its property by an alternative video services provider that uses that property to provide its service. Yet, in stark contrast, the franchised operators' position throughout this entire proceeding is that if the alternative provider wishes to use the franchised operator's property (i.e. its home run wiring) to provide service it should have to pay through the nose, assuming the franchised operator even allows the use of its property. That is, the

franchised operators hypocritically argue that property owners must allow alternative providers to use the owner's property for free, but franchised operators should be able to charge tens of thousands of dollars to alternative providers who want to use a franchised operator's property. The hypocrisy of this argument is made even greater (if that is possible) by the fact that the franchised operator ordinarily has already recouped its costs of the wiring many times over.

The hypocrisy and irony does not end there. While the franchised operators are claiming that the payments to property owners are kickbacks, the operators want and expect not only payments from alternative providers who use their wiring to provide service but also payments from local exchange carriers who use the operators' drops. If the payments to property owners are kickbacks, why aren't these payments also kickbacks? For that matter, why wouldn't payments by video services providers to utilities also be kickbacks? Those questions are unanswerable for one good reason: none of the payments, including the payments to property owners, are kickbacks.

One final irony that the Commission should be aware of is that notwithstanding the franchised operators' denouncement of payments to property owners, ICTA members are aware of several franchised cable operators that routinely make such payments, including TCI and MediaOne. Thus, an inference drawn from many franchised operators' comments -- that it is only alternative providers that compensate property owners' for the use of their property -- is also false.

E. Upgrades and Additional Services

Several franchised operators also claim that the Commission should not institute the Proposed Procedures because the procedures purportedly either will discourage the operators

from upgrading their systems or prevent them from providing other telecommunications services at MDUs. Neither argument has any merit.

The Proposed Procedures only apply where the provider no longer has the right to serve the property (or the tenant in a unit-by-unit scenario). Therefore, these procedures should have no impact whatsoever on a franchised operators' decision as to whether to perform an upgrade. In non-mandatory access states, the provider's decision as to whether to perform an upgrade ordinarily will be based on whether the costs of such upgrades can be recouped during the period of time in which the operator has a right to remain on the property -- which period is not affected by the Proposed Procedures. In mandatory access states, the franchised operator usually will make any reasonable upgrades because it presumably will be on the property forever and will be able to benefit from the upgrades for every tenant it serves. The Proposed Procedures do not change that.[9/]

For virtually identical reasons, in non-mandatory access states there is no merit to the franchised operators' arguments relating to their provision of other telecommunications services. In mandatory access states, franchised operators ordinarily have no right to provide other telecommunications services over the objections of property owners, and therefore it is not the Proposed Procedures -- but rather the property owner -- that will determine whether the franchised operator provides such other services. Moreover, and in any event, it is hardly unfair for the franchised operator, who has recouped its home run wiring many times over and then sold

---

[9/] In raising this argument, the franchised operators have forgotten that the Proposed Procedures apply to alternative providers as well. Therefore, in a unit-by-unit scenario, an alternative provider must sell, abandon or remove the home run wiring where the tenant in the unit wishes to switch providers.

it for an additional profit to boot, to have to install new wiring to provide other telecommunications services, assuming the owner even allows it to provide such services.

F. Agency

A few franchised operators assert that in the unit-by-unit scenario, the Commission should not permit the owner or new provider to notify the incumbent of a tenant's election to switch providers because of the risk of slamming. That argument has no validity. There is no material risk of slamming whatsoever. This is not like telephone service where a tenant may not even be aware of a change in providers. Here, if the new provider or owner tried to engage in slamming the incumbent would quickly find out when the tenant complained of an unauthorized switch.

Requiring tenants themselves to provide notification will only lead to disputes, confusion and uncertainty, such as where the tenant forgets to notify the incumbent, notifies the wrong department or person at the incumbent or where there is a dispute as to whether the tenant gave notification at all. The last thing needed in this area are more disputes, confusion and uncertainty.

G. Cable Home Wiring

While the discussion in these comments and elsewhere focus primarily on the Proposed Procedures in Section III.C. involving the home run wiring, the Commission was correct not to lose sight of the importance of the procedures for the cable home wiring (i.e. the wiring from the demarcation point to the television set) discussed in Section III.D. ICTA generally concurs with the Commission's recommendations set forth in Section III.D. for the reasons set forth therein.

Some franchised operators opposed some of the Commission's proposals with regard to the cable home wiring, including the proposals that (i) an MDU owner's termination of a cable operator constitutes a voluntary termination triggering operation of the cable home wiring procedures; and (ii) an owner or alternative provider should be able to purchase the cable home wiring if the tenant refuses to purchase it. As to the first issue, if the cable home wiring rules are not applicable where the owner terminates the service, the rules will provide no benefit in the building-to-building scenario. The benefit of these rules under that scenario is that they at least allow the alternative provider to use some of the inside wiring where a termination occurs. It should not make any difference who terminates the service. Moreover, as fully explained in earlier comments filed by ICTA in this proceeding, the language in the statute regarding voluntary termination was inserted to ensure that a subscriber that failed to pay could not buy the wiring. In short, the franchised operators' proposal would merely lead to unnecessary wiring.

Similarly, refusing to allow the property owner or the alternative provider to buy the cable home wiring where the tenant elects not to purchase it would undermine the benefits of the rules. Tenants generally will not want to purchase cable home wiring. It is not as if many tenants plan to take that wiring with them and use it in the next place they live like a computer. As long as tenants have access to the wiring while they live in the MDU, they generally are satisfied. Therefore, unless the property owner or alternative provider can purchase this wiring upon service termination, it will ordinarily remain with the incumbent provider, which simply creates unnecessary rewiring by the alternative provider.

H. Extraneous Issues raised by Franchised Operators

In direct contravention of the Commission's explicit request to limit the issues to those raised in the Further Notice, certain franchised operators raised many extraneous issues. These issues include the owner compensation issue discussed in II.D. above as well as proposals relating to exclusive contracts, long term contracts and mandatory access. Obviously, this is not the proper proceeding to address any of those issues and the franchised operator's raising of those issues was at best ill-advised.

CONCLUSION

In light of the foregoing, ICTA believes that the Commission should adopt rules and regulations consistent with ICTA's comments herein and in ICTA's other submissions and comments in this proceeding.

Respectfully submitted,

INDEPENDENT CABLE & TELECOMMUNICATIONS ASSOCIATION

By: _____

Deborah C. Costlow
Alan G. Fishel
ARENT FOX KINTNER PLOTKIN & KAHN
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 857-6380

Its Attorneys

Dated: October 6, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of October, 1997, a true copy of the foregoing Reply Comments of Independent Cable & Telecommunications Association was served via first-class mail, postage prepaid on the following:

Stephen R. Effros, President
Cable Telecommunications Association
P.O. Box 1005
Fairfax, VA 22030
Counsel for The Telecommunications Association

Michael H. Hammer
Wilkie, Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036
Counsel for Tele-Communications, Inc.

Charles S. Walsh, Esq.
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, NW
Suite 600
Washington, DC 20036
Counsel for Adelphia Communications Corporation

Paul Glist
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, DC 20006
Counsel for Jones Interactive; Marcus Cable Co., Century Communications Corp., Charter Communications, American Cable Entertainment, Greater Media, Inc., Cable Televisions Association of Maryland, Delaware and the District of Columbia, Florida Cable Telecommunications Association, Cable Televisions Association of Georgia, Ohio Cable Telecommunications Association, Minnesota Cable Communications Association, New Jersey Cable Telecommunications Association, Oregon Cable Television Association, South Carolina Cable Television Association, Tennessee Cable Telecommunications Association, Texas Cable & Telecommunications Association, Virginia Cable Telecommunications Association

James P. Markoski
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, NW
P.O. Box 407
Washington, DC 20044
Counsel for Consumer Electronics Manufacturers Association

Gail L. Polivy
1850 M Street, NW
Suite 1200
Washington, DC 20036
Counsel for GTE Service Corporation

Joseph S. Paykel
MEDIA ACCESS PROJECT
1707 L Street, NW
Suite 400
Washington, DC 20036
Counsel for Media Access Project

Frank W. Lloyd
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo
701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004
Counsel for Continental Cablevision, Inc.
and Cablevision Systems Corporation

Nicolas P. Miller
Miller, Canfield, Paddock and Stone
1225 Nineteenth Street, NW
Suite 400
Washington, DC 20036-2420
Counsel for Building Owners and Mangers Association International, National Realty Committee, National Multi Housing Council, National Apartment Association, Institute of Real Estate Management and National Association of Home Builders

Steven J. Cox
Senior Vice President
Business Affairs & General Counsel
DIRECTV, Inc.
2230 East Imperial Highway
El Segundo, CA 90245

Paul J. Sinderbrand
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, NW
Washington, DC 20006
Counsel for Wireless Cable Association International, Inc.

Daniel L. Brenner
1724 Massachusetts Avenue, NW
Washington, DC 20036
Counsel for the National Cable Television Association, Inc.

Henry Goldberg
Goldberg, Godles, Wiener & Wright
1229 19th Street, NW
Washington, DC 20036
Counsel for OpTel, Inc., MultiTechnologies Services, L.P.

Michael J. Karson
2000 West Ameritech Drive
Room 4H88
Hoffman Estates, IL 60196-1025
Counsel for Ameritech

Gregory L. Cannon
1020 19th Street, NW
Suite 700
Washington, DC 20036
Counsel for U.S. West, Inc.

Aaron I. Fleischman
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, NW
Suite 600
Washington, DC 20554
Counsel for Time Warner Cable,
Time Warner Communications

Alexandra M. Wilson, Esq.
Cox Enterprises, Inc.
1320 19th Street, NW
Suite 200
Washington, DC 20036
Counsel for Cox Communications, Inc.

Robert M. Lynch
One Bell Center, Room 3522
St. Louis, MO 63101
Counsel for SBC Communications, Inc.
Southwestern Bell Telephone Co.,
Southwestern Bell Video Services, SBC Media Ventures, L.P., Pacific Bell, Pacific Telesis Video Servicers

Lawrence G. Malone
General Counsel
New York State
Department of Public Service
3 Empire State Plaza
Albany, NY 12223
Counsel for New York State Department of Public Service

Rodney D. Clark
Vice President
Government and Public Affairs
Community Associations Institute
1630 Duke Street
Alexandria, VA 22314
Counsel for Community Associations Institute

Lawrence R. Sidman
Verner, Liipfert, Bernhard
McPherson & Hand, Chtd.
901-15th Street, NW
Washington, DC 20005
Counsel for Philips Electronics, N.A. Corporation and Thomson Consumer Electronics, Inc.

Philip J. Kantor, Esq.
Bienstock & Clark
First Union Financial Center
200 S. Biscayne Boulevard, Suite 3160
Miami, FL 33131
Counsel for CableVision Communications, Inc., Classic Cable, Inc. and Comcast Cable Communications, Inc.

Karen E. Watson
EchoStar Communications
1850 M Street, NW
Suite 1070
Washington, DC 20036

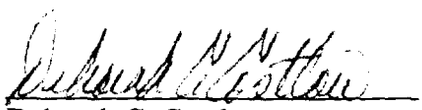
Henry L. Baumann
Executive Vice President and
General Counsel
National Association of Broadcasters
1771 N Street, NW
Washington, DC

Jean L. Kiddoo
Swidler & Berlin, Chtd.
3000 K Street, NW
Suite 3000
Washington, DC 20007
Counsel for RCN Telecom Services, Inc.

J. Curtis Henderson
Vice President & General Counsel
Heartland Wireless Communications, Inc.
200 Chisholm Place, Ste. 200
Plano, TX 75075

Michael R. Bennet
Bennet & Bennet, PLC
1019 - 19th Street, NW
Suite 500
Washington, DC 20036
Counsel for LEACO Rural Telephone Cooperative, Inc.

James A. Hirshfield
President
Summit Communications, Inc.
3633 136th Place, SE
Suite 107
Bellevue, WA 98006

BY: 

Deborah C. Costlow
ARENT FOX KITNTER PLOTKIN
& KAHN
1050 Connecticut Avenue, NW
Washington, DC 20036-5339
(202) 857-6380